

SENATE BILL 1860

By Gardenhire

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 4 and Title 36, Chapter 5, relative to
domestic relations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-4-121, is amended by deleting
subdivision (a)(1) and substituting:

(1) In all actions for divorce or legal separation, prior to any determination as to
whether it is appropriate to order the support and maintenance of one (1) party by the
other, the court having jurisdiction thereof shall:

(A) Equitably divide, distribute, or assign the marital property between
the parties without regard to marital fault in proportions as the court deems just
based on the factors set forth in subsection (c); and

(B) Allocate responsibility for paying the marital debt in proportions as the
court deems just based on the factors set forth in subsection (i). The court may
order the payment of all or a portion of the marital debt from the marital property
prior to distribution of the marital property to the parties.

SECTION 2. Tennessee Code Annotated, Section 36-4-121, is amended by deleting
subdivision (a)(2) and substituting:

(2) In all actions for legal separation, the court, in its discretion, may equitably
divide, distribute, or assign the marital property in whole or in part, or reserve the division
or assignment of marital property until a later time. If the court makes a final distribution
of marital property at the time of the decree of legal separation, then any property
acquired after the date of the decree of legal separation is separate property. The court,

in its discretion, may also make a final allocation of all or part of the marital debt existing at the time of the decree of legal separation, or the court may reserve the allocation of marital debt until a later time. If the court makes a final allocation of marital debt at the time of the decree of legal separation, then any debt acquired after the date of legal separation is separate debt.

SECTION 3. Tennessee Code Annotated, Section 36-4-121(b), is amended by deleting the language "For purposes of this chapter:" and substituting the language "As used in this chapter:".

SECTION 4. Tennessee Code Annotated, Section 36-4-121(b), is amended by adding the following as new subdivisions:

() "Marital debt":

(A) Means all debt incurred by either or both spouses during the course of the marriage through the date of the final hearing and any proceedings brought pursuant to Rule 59 of the Tennessee Rules of Civil Procedure; and

(B) Includes debt incurred to pay attorney fees and expenses incurred in connection with the proceedings, and unpaid attorney fees and expenses incurred in connection with the proceedings through the date of the final hearing and any proceedings brought pursuant to Rule 59 of the Tennessee Rules of Civil Procedure;

() "Separate debt" means:

(A) All debt incurred by either spouse prior to the date of the marriage; and

(B) All debt incurred after the entry of a decree of legal separation if the court allocated responsibility for payment of marital debt as part of the decree of legal separation.

SECTION 5. Tennessee Code Annotated, Section 36-4-121, is amended by adding the following as a new subsection:

(i)

(1) In allocating responsibility for the payment of marital debt, the court shall consider the following factors:

- (A) The purpose of the debt;
- (B) Which party incurred the debt;
- (C) Which party benefitted from incurring the debt; and
- (D) Which party is best able to repay the debt.

(2) In allocating responsibility for payment of unpaid attorney fees and expenses incurred in connection with the proceedings, the court shall consider the factors in subdivision (i)(1) and the following factors:

- (A) The total amount of attorney fees and expenses incurred by each party in connection with the proceedings;
- (B) The total amount of attorney fees and expenses paid by each party in connection with the proceedings;
- (C) Whether the attorney fees and expenses incurred by each party are reasonable under the factors set forth in Rule 1.5 of the Tennessee Rules of Professional Conduct; and
- (D) Whether the attorney fees and expenses were necessary.

(3) The court may order the payment of all or a portion of the marital debt from the marital property prior to the allocation of responsibility for paying marital debt by either party.

SECTION 6. Tennessee Code Annotated, Section 36-4-121(c), is amended by adding the following as a new subdivision:

() The total amount of attorney fees and expenses paid by each party in connection with the proceedings and whether the attorney fees and expenses were paid from marital property, separate property, or funds borrowed by a party;

SECTION 7. Tennessee Code Annotated, Section 36-5-121, is amended by deleting subdivision (h)(1) and substituting:

(1)

(A) Alimony in solido, also known as lump sum alimony, is a form of long-term support, the total amount of which is calculable on the date the decree is entered, but which is not designated as transitional alimony. Alimony in solido may be paid in installments if the payments are ordered over a definite period of time and the sum of the alimony to be paid is ascertainable when awarded. The purpose of this form of alimony is to provide financial support to a spouse and to enable the court to equitably divide and distribute marital property.

(B) Alimony in solido may be awarded for attorney fees and expenses incurred in connection with the proceedings through the date of the final hearing and any proceedings brought pursuant to Rule 59 of the Tennessee Rules of Civil Procedure. When determining whether attorney fees and expenses should be awarded as alimony in solido, the court shall consider the following:

(i) The factors enumerated in subsection (i);

(ii) The total amount of attorney fees and expenses incurred and the total amount of attorney fees and expenses paid by each party in connection with the proceedings;

(iii) Whether the attorney fees and expenses requested are reasonable under the factors set forth in Rule 1.5 of the Tennessee Rules of Professional Conduct; and

(iv) Whether the attorney fees and expenses were necessary.

SECTION 8. This act takes effect upon becoming a law, the public welfare requiring it.